IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.145 of 2007
MD.TAUSIF @ GUDDU
Versus
STATE OF BIHAR & ANR
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4. 4.9.2008. This criminal revision has been preferred against the order dated 9.11.2006 passed by Family Court, Motihari in Case No.M36 of 2006 thereby the petitioner has been directed to pay total of Rs.2200/- per month as interim maintenance to the opposite party no.2.

Heard the learned counsel for both the parties.

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The learned counsel for the petitioner challenged the order in question both in law as well as on facts. The submission is that the quantum of interim maintenance is not only disproportionate to income of the petitioner but also much in excess of the amount claimed by the opposite parties in their application for interim maintenance. It is further submitted that the opposite parties in their application prayed for payment of Rs.450/- per month only as interim maintenance but the learned court below has awarded Rs.2200/- per month, which

is illegal and bad in law.

The learned counsel for the opposite party submitted that the court below has rightly awarded Rs.2200/- per month as interim maintenance keeping in view cost of living and hardship. However, the main submission is that this order has been passed by the Family Court. Therefore, civil revision shall lie against the order. No criminal revision is maintainable.

So far the question as to whether remedy against any order passed by Family Court under section 125 Cr.P.C. would lie under criminal revision or civil revision is concerned, the provision of Family Court Act,1984 itself is very clear. Section 7(2)(a), 10, 18(2) and 19(4) of the Family Court Act,1984 are relevant provisions which would clear the matter. These sections run as follows :

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> "7(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-
>
> (a) the jurisdiction

exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure,1973 (2 of 1974).”

“10. Procedure generally.- (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure,1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings (other than the proceedings under Chapter IX of theCode of Criminal Procedure,1973 (2 of 1974) before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and

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shall have all the powers of such court.

2. Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

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(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

"18.(2) An order passed by a

Family Court under Chapter IX of the Code of Criminal Procedure, 1973(2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code."

"19.(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding."

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From perusal of the above scheme of the Act, it is quite clear that the Family Court exercises two types of power. While dealing with the cases except the cases under Chapter-IX of the Cr.P.C. they act as Civil Court exercising the power of District Judge. While dealing with the cases under Chapter-IX of the Cr.P.C. they act as a criminal court exercising the power of Judicial Magistrate. Naturally, the remedy against any order passed by the Family Court as Civil Court would lie under provisions of C.P.C. read with section 19(1) of the Act and against the order passed as criminal court the remedy would lie under provision of Cr.P.C. read with section 19(4) of Family Court Act.

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The revisional power conferred under section 19(4) of the Act is enabling provision and is akin to the power mentioned in section 397 of the Cr.P.C. Both the provisions confer power of revision upon the High Court for the purpose of satisfying itself as to correctness, legality and propriety of the order in question. Whereas the power conferred under section 115 of the

Cr.P.C. is entirely different. It relates to examination of only jurisdictional illegality and material irregularity in the order. It clearly signifies that revisional power mentioned in section 19(4) of the Family Court Act is out and out criminal revision. It cannot be termed as civil revision. The distinction between civil revision and criminal revision basically lies in the nature and scope of the power. The above view is also fortified by a decision of the Full Court of Kerala High Court reported in 1998(1) Crimes 143.

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In view of the discussion made above, this Court is not persuaded to accept the view of the learned counsel for the opposite party that criminal revision would not lie against the order passed by the Family Court under section 125 Cr.P.C.

So far quantum of interim maintenance is concerned; it is apparently bad and illegal. The opposite party in her petition dated 6.5.2006 (Annexure-2) has prayed for payment of Rs.450/- per month as interim maintenance but surprisingly, the

Family Court vide impugned order has granted Rs.2200/- per month as interim maintenance. Judging from any standard and angle, the order of the Family Court is not sustainable in the eye of law.

Accordingly, this revision is allowed with modification in the amount of interim maintenance only. The petitioner is directed to pay Rs.450/- per month to the opposite party no.2 as interim maintenance instead of Rs.2200/-.

The court below shall take effort to dispose of the case as early as possible preferably within four months.

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(Ghanshyam Prasad)

N.H./

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